BANK OF INDIA

v.

KRISHNA KUMAR S/O TRIYUGI NARAIN SHARMA

HIGH COURT, KUALA LUMPUR
DATO' HJ ABU MANSOR BIN ALI J.
[ORIGINATING SUMMONS NO. R8-24-39 OF 1990]
3 JULY 1993

PRACTICE & PROCEDURE: Appeal against registration of foreign judgment by SAR - Order 14 judgment entered by plaintiff in Singapore - Claim on guarantee - Defendant signing blank guarantee - Allegation of fraud - Allegation of agreement between plaintiff and defendant not to sue - Whether agreement varied - Whether defendant discharged from liability - Plaintiff claiming interest from date of foreign judgment - Whether interest should be claimed from date of registration of judgment - Consideration of s. 4(6) Reciprocal Enforcement of Judgments Act 1958 s. 4 I (a)(iv) Foreign Judgments (Reciprocal Enforcement) Act 1933 (Singapore).

The case before the Court was an appeal by the defendant/appellant against the Judge's previous decision dismissing his appeal with costs against the decision of the learned Senior Assistant Registrar to register a Singapore judgment.

The plaintiff/respondent obtained an O. 14 judgment against the defendant in Singapore pursuant to a guarantee signed by the defendant as security for facilities granted by the plaintiff to the principal borrower company of which the defendant was a director. The defendant alleged that the guarantee on which the plaintiff relied on was obtained by fraudulent means there being no board resolution of the principal borrower, no letter of offer from the plaintiff in respect of the facilities and no letter of acceptance. The defendant allegedly signed a blank guarantee which details were filled up at a subsequent time. He further claimed the existence of an agreement between the parties not to sue which, in view of the suit, varied the agreement and discharged him as a guarantor. The defendant also raised the issue of when interest was properly claimable by the plaintiff on the judgment contending that it ought to be from the date of registration and not the date of judgment as claimed by the plaintiff.

Held:

[1] On the issue of fraud the Court upheld the contention of the plaintiff that even if the guarantee was signed blank it would not be proof of fraud but it would mean that the guarantee was unlimited. The Court found merit in the plaintiff's Counsel's argument that the defendant took full advantage of the proceedings in Singapore before the judgment was obtained. There was therefore no fraud of the Singapore Court.

[2] On the issue of the purported agreement not to sue raised by the defendant, the Court found that this plea could not be heard as the issue had gone before the Singapore Court at which time the defendant had entered proper appearance instead of conditional appearance for the O. 14 proceedings and had lost. He had appealed but had also lost the appeal.

[3] The Court found no merit in the objection raised by the defendant in respect to interest obtained by the plaintiff in view of s. 4(6) of the Reciprocal Enforcement of Judgments Act 1958 (Act 99).

[Appeal dismissed with costs].

Cases referred to:

Abouloff v. Oppenheimer & Co. [1882] 10 QBD 295 ***(refd)***

Vadala v. Lawes [1890] 25 QBD 310 ***(cit)***

M.P.M. Entertainments Corporation Ltd. v. Fox [1939] Victoria Law Report 105 ***(refd)***

Syal v. Heyward & Anor. [1948] 2 KB 433 ***(refd)***

New Zealand Loan & Mercantile Agency Company v. Paterson & McLeod [1882] 1 CA 325 ***(refd)***

Legislation referred to:

Reciprocal Enforcement of Judgments Act 1958 (Act 99), s. 4(6)

Foreign Judgments (Reciprocal Enforcement) Act 1933, s. 4I(a)(iv) (Singapore)

For the plaintiff/respondent - Ng Leong Huat; M/s. Skrine & Co.

For the defendant/appellant - K.K. Sharma in person

JUDGMENT

Hj Abu Mansor Bin Ali J:

This is an appeal by the defendant/appellant against my decision given on 17 August 1992 dismissing his appeal with costs against the decision of the learned Senior Assistant Registrar registering a Singapore judgment on 20 October 1989.

The main submission of the appellant/defendant is that plaintiff committed fraud when he obtained the Singapore judgment. Defendant said that the judgment entered by the plaintiff in Singapore was an O. 14 judgment. He, however, could not categorically state the fraud as he did not have the full facts of the fraud especially because the information of the fraud came only after the judgment. Defendant alleged that the guarantee on which the plaintiff relied on and for which the Singapore judgment was obtained was an incorrect document which was obtained without the defendant's knowledge or consent.

Defendant alleged that the defendant signed the guarantee which was meant as a security for facilities granted by the plaintiff to the principal borrower company. The defendant was a director of the principal borrower company. The defendant says there was absence of a board resolution of the principal borrower. There was no letter of offer from the plaintiff offering the facilities and consequently no letter of acceptance by the borrower. On the top of that the defendant signed the guarantee in blank and he alleged the details were fraudulently filled up subsequently. He came to know of this years later.

The defendant alleged that rather than meet this allegation with suitable rebuttal by documentary evidence both in the Singapore O. 14 proceedings and before the Senior Assistant Registrar in Malaysia the plaintiff kept silent on this allegation.

The defendant alleged that he has raised fraud and able to particularise it, he prays that the judgment be set aside until the trial of the issue of fraud. He also submitted the plaintiff by being silent has admitted to the fraud alleged. The defendant cited the case of *Abouloff v. Oppenheimer & Co.* [1882] 10 QBD 295 where to an action claiming the value of certain goods and brought upon a foreign judgment, whereby the defendants were ordered to return to the plaintiff the goods or to pay to her their value, the defence alleged that the plaintiff obtained the foreign judgment by fraudulently representing to the foreign Court that the goods were not then in her possession, and by fraudulently concealing from the foreign Court that the goods then were in her possession and were concealed by her:- Held, upon demurrer, that the defence was good. The defendant alleged this judgment was followed in the case of *Vadala v. Lawes* [1890] 25 QBD page 310.

Another complaint of the defendant the interest claimed by the plaintiff should be from the date of registration and not from the date of the foreign judgment. The defendant cited *MPM Entertainments Corporation Ltd. v. Fox* [1939] Victoria Law Report 105 where it was held that the interest be from the date of registration.

The last point raised by the defendant was he, as a guarantor, had been discharged because there was an agreement between the plaintiff and the defendant company not to sue but to settle matters amicably. Since the plaintiff had resorted to suing there is then variation to the agreement absolving the defendant.

The respondent's Counsel replied to the point of interest being from the date of registration by citing s. 4(6) of the Reciprocal Enforcement of Judgments Act 1958 (Act 99):

> (6) In addition to the sum of money payable under the judgment of the original Court, including any interest which by the law of the country of the original Court becomes due under the judgment up to the time of registration, the judgment shall be registered .... including the costs .... from the original Court.

I find no merit on this objection of interest obtained by the plaintiff raised by the defendant.

On the issue of agreement not to sue raised by the defendant company in Singapore the respondent contend this is not for the foreign Court because the issue had gone before the Singapore Court. It is not disputed that the defendant had entered appearance on the O. 14 proceedings and did appeal but lost their appeal. It is also not disputed that the defendant instead of entering conditional appearance entered a proper appearance and lost and so this plea cannot be heard.

I also uphold the respondent's argument and say it had merit.

On the issue of fraud raised by the defendant, the respondent cited the case of *Syal v. Heyward & Anor.* [1948] 2 KB 443 which decided that where an application is made under s. 4, sub-s. I(a)(iv) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (in *para materia* to

Malaysian provision) to set aside, on the ground of fraud, the registration in this country of the judgment of a foreign Court, the fraud to be established must be a fraud on the foreign Court pronouncing the judgment.

I uphold the respondent's contention that the guarantee if true being in blank is nowhere near to allegation of fraud. If blank it is an unlimited guarantee. Respondent cited the case of *New Zealand Loan And Mercantile Agency Company v. Paterson And McLeod* [1882] 1 CA page 325 where a guarantee "to be answerable for the amount of C's present and future liabilities to you, not exceeding in the whole the sum of £ _, to be payable within _ days after demand" is a good and valid guarantee, binding upon the guarantor without any limit as to amount.

I find merit in the respondent's Counsel's argument that the appellant took full advantage of the proceedings in Singapore before the judgment in Singapore was obtained. There is therefore no fraud of the Singapore Court. I therefore dismiss this appeal with cost to the respondent.

BEN FOODS (EAST MALAYSIA) SDN. BHD.

v.

KUCHING HOTELS SDN. BHD.

HIGH COURT, KUCHING
DATUK CHONG SIEW FAI J.
[SUIT NO. KG. 199 OF 1987]
19 JUNE 1993

PRACTICE & PROCEDURE: Application for striking out counterclaim - Whether claim disclosed no reasonable cause of action - Whether claim frivolous and vexatious and an abuse of the process of Court.

This was an appeal by the plaintiff against the decision of the Deputy Registrar dismissing its application to strike out paragraph 14 of the amended counterclaim of the defendant.

The facts were that pursuant to a tenancy agreement the plaintiff entered into possession of the premises belonging to the defendant and paid the defendant a sum of RM 474,300. The plaintiff however vacated the premises before the agreed term of tenancy expired and subsequently claimed back from the defendant RM355,725.

The defendant, while contesting the claim, filed a counterclaim for the damage caused by the plaintiff's premature vacation thereof and applied before Datuk Tan Chiew Thong J. for summary judgment in respect of the same. The application was dismissed and in so far as relating to paragraph 14 of the counterclaim, the learned Judge ruled that the issues could not be resolved on conflicting affidavits and should go to trial. By the said paragraph 14, the defendant in effect alleged suffering of loss and damage caused to its premises resulting from the plaintiff's occupation, with the particulars of the loss and damage listed therein.

The plaintiff then applied to the Deputy Registrar to strike out paragraph 14 on the grounds that it disclosed no reasonable cause of action and that it was vexatious and frivolous and an abuse of the process of Court. The Deputy Registrar dismissed the application saying that the issues raised had already been decided by the learned Judge and therefore it was an abuse of the process of Court for the plaintiff to relitigate the same. The plaintiff hence appealed.

Held:

[1] It is settled law that a claim in an action will not be struck out for disclosing no reason-